

JAMES INNERARITY, PLAINTIFF IN ERROR, v. THOMAS BYRNE.

A citation is not necessarily a part of the record, and the fact of its having been issued and served may be proved *aliunde*.

*Mr. Bagby* moved to dismiss the writ of error in this case for the want of a citation. None appeared in the record.

*Mr. Justice McLEAN* delivered the opinion of the court, saying, that the citation was not necessarily a part of the record, it forming no part of the proceedings of the court below. The presumption is, that one was issued when the writ of error was allowed, and it may be proved *aliunde*.

Motion overruled, and case continued to next term.

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WILLIAM G. COOK, PLAINTIFF IN ERROR, v. JOHN L. MOFFAT AND JOSEPH CURTIS, DEFENDANTS IN ERROR.

A contract, made in New York, is not affected by a discharge of the debtor under the insolvent laws of Maryland, where the debtor resided, although the insolvent law was passed antecedently to the contract.

The prior decisions of this court upon this subject reviewed and examined.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the District of Maryland.

Cook was a citizen of Maryland, and Moffat and Curtis were citizens of New York.

It was an action brought, in July, 1835, by Moffat and Curtis against Cook, upon the common money counts. Cook confessed judgment, subject to the opinion of the court upon the following case stated, namely : —

*In Circuit Court of the United States, Fourth Circuit, District of Maryland.*

JOHN L. MOFFAT and JOSEPH CURTIS, surviving partners of JONATHAN WILMARTH, v. WILLIAM G. COOK.

*Statement of Facts.* John L. Moffat, Joseph Curtis, and Jonathan Wilmarth (the last of whom is now deceased) were citizens of the State of New York and resident there, and partners trading under the name and firm of Wilmarth, Moffat, & Curtis, and the defendant was a citizen and resident of Maryland during the times when the contracts and transactions upon which this suit is founded, or which constitute the causes of this action, were entered into and had and made between the said firm and said Cook.

That the course of dealing was, that Cook, the defendant, used to write to said firm, ordering such articles or goods as he wanted, and they, said firm, sent them to him, and charged the goods in